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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,214	09/25/2000	Christine E. Browning	9010-3	4277

20792 7590 08/04/2003

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EXAMINER

LY, CHEYNE D

ART UNIT	PAPER NUMBER
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1631

7

DATE MAILED: 08/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/670,214

Applicant(s)

BROWNING ET AL.

Examiner

Cheyne D Ly

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 24, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-68 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on September 25, 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

1. Applicant's election without traversal of the study type TEDPHA, in Paper No. 7, filed May 24, 2003, is acknowledged.
2. Claims 1-68, TEDPHA, are examined on the merits.

CLAIM REJECTIONS - 35 U.S.C. § 112, SECOND PARAGRAPH

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2, 26, and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Specific to claim 2, line 2; claim 26, line 3; and claim 48, line 4, Applicants use the abbreviations of TEDPHA and TEXPHA. Abbreviations in claims are vague and indefinite unless accompanied by the full name, usually in parentheses.

CLAIM REJECTIONS - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4, 7, 10, 11, and 17-22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Herrinton (1996).
8. Herrington discloses a method for using the Tennessee Eastman Division Process Hazard analysis (TEDPHA) for studying the Mechanical Integrity program in compliance with OSHA's

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PSM regulation (1910.119) (page 110, column 1, lines 22-25) to ensure that process equipment containing and controlling highly hazardous chemicals is maintained to high standards which minimizes the chances of accidental release and subsequent injuries or accidents (Abstract etc.; page 110, column 1, lines 7-11; column 2, lines 8-14). The method comprises charging each to define the types and frequencies of inspections and develop guidelines for correcting deficiencies (page 111, column 1, lines 15-19), as in instant claims 1-3.

9. The inclusion of OSHA document by Clark (September 29, 1993) is not used as a prior art but only to disclose that PSM of Highly Hazardous Chemical standards, 29 CFR 1910.119 as defined by OSHA as directed to “worst-first” basis PHA, processes are divided into nodes according to their scheduled dates, and the most hazardous process is completed first (Clark, page 1, lines 2-17), as in instant claims 4 and 7.

10. OSHA document 57:6356 as directed to 29 CFR 1910.119 discloses many businesses develop custom checklist or what-if questions as part of their PHA to determine which PHAs to conduct first (page 20, lines 23-28), as in instant claims 10 and 11.

11. The employer complete a compilation of written process safety information before conducting any process hazard analysis (page 4, lines 21-22), a report directed to an incident is generated; establish a system to promptly address and resolve the incident, resolutions; and corrective actions are documented (page 11, (m) (4) and (5)), as in instant claims 15 and 16.

12. An emergency resolution plan is generated wherein a number of interim actions and the final action are listed (page 26, lines 15-28), as in claim 17.

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13. The resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed (page 7, (5)), as in instant claim 18.

14. A tracking system might include periodic status reports shared with affected levels of management, specific reports such as completion of an engineering study, and a final implementation report. This type of tracking system provides the employer with the status of the corrective action (page 28, ¶ 6 to page 29, ¶ 1), as in instant claims 19-22.

CLAIM REJECTIONS - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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17. Claims 1-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herrington (1996) in combination with Heinlein et al. (US 5,950,217 A) taken with Occupational Safety and Health Administration (61:56746-56856, November 04, 1996).

18. Herrington discloses the limitations to claims 1-4, 7, 10, 11, and 17-22 as discussed above.

19. However, Herrington does not disclose the limitations of claims 5, 6, 8, 9, 12-16, and 23-68.

20. Heinlein et al. discloses a computer system and method for process safety with the object to prevent employee exposures to chemical hazards according OSHA developed process safety management standards (column 1, lines 61-66). The said method comprises set priorities and conducts analysis according to required schedules; performing a process hazard assessment (PHA); update and reevaluate PHAs at least every five years. Further, a system is established to promptly address findings and recommendations, assure recommendations are documented and resolved, develop a written schedule for completing actions, communicate actions to operating, maintenance and other employees, and to perform and document the actions taken (column 2, lines 18-38), as in instant claims 5, 6, 29, and 31.

21. An apparatus is provided for inputs and retrieving the above documents from a database (Abstract etc.), as in instant claims 23, 24, 45, 46, 67, and 68.

22. Heinlein et al. discloses a system and computer program for performing the methods discussed above (column 4, lines 14-67 to column 5, lines 1-11 and claims 1-5), as in instant claims 25 and 47.

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23. The disclosure of Herrington in combination with Heinlein et al. above suggest the limitations of the instant claims 26, 27, 32, 35, 36, 38-44, 48, 49, 54, 57, 58, and 60-66.

24. Occupational Safety and Health Administration (61:56746-56856, November 04, 1996) discloses a method of studying of employee exposure to a hazardous chemical such as 1,3-Butadiene by determining the risk of exposure (page 27, lines 21-22) and ranking the job in accordance with exposure, and develop a job-exposure matrix (page 28, lines 13-17) as in claims 8, 9, 12, 33, 34, 37, 55, 56 and 59.

25. Table V-16 (page 87) discloses a matrix citing consequent severity in terms of disease and likelihood of occurrences, as in instant claims 13 and 14.

26. Herrington discloses a method for being in compliance with OSHA's PSM regulation (1910.119) (page 110, column 1, lines 22-25). While, Heinlein et al. discloses a computer system for reducing the time it takes to implement the PSM regulation (1910.119) (column 1, lines 61-62 and column 2, lines 60-62). An artisan of ordinary skill in the art at the time of the instant invention would have been motivated to partake the concept emphasized by Herrington for a method for being in compliance with OSHA's PSM regulation and to reduce implementation time by using the computer system of Heinlein et al.

27. Further, Occupational Safety and Health Administration (61:56746-56856) discloses the the implementation of OSHA's PSM regulation (1910.119) as directed toward such chemical hazard as 1,3-Butadiene. One of ordinary skill in the art would have been further motivated to partake the concept of a computer system for implementing OSHA's PSM regulation (1910.119) as taught by Herrington and Heinlein et al. toward such hazard chemical as 1,3-Butadiene as taught by Occupational Safety and Health Administration (61:56746-56856).

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28. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to use the method and computer system for being in compliance with OSHA's PSM regulation (1910.119), as taught by Herrington and Heinlein et al., as directed to 1,3-Butadine as taught by Occupational Safety and Health Administration (61:56746-56856).

CONCLUSION

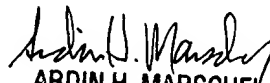
29. Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (see 37 CFR § 1.6(d)). The CM1 Fax Center number is either (703) 308-4242 or (703) 305-3014.

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Dune Ly, whose telephone number is (703) 308-3880. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

31. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on (703) 308-4028.

32. Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instruments Examiner, Tina Plunkett, whose telephone number is (703) 305-3524 or to the Technical Center receptionist whose telephone number is (703) 308-0196.

C. Dune Ly
7/31/03


ARDIN H. MARSCHER
PRIMARY EXAMINER